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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

MIRMASSOUD KASHANI,

Defendant and Appellant.

D059467

(Super. Ct. No. SCN236630)

APPEAL from a judgment of the Superior Court of San Diego County, Daniel B. Goldstein, Judge. Affirmed.

Mirmassoud Kashani entered a negotiated guilty plea to one count of conspiracy to defraud another person of property by false pretenses (Pen. Code, § 182, subd. (a)(4))¹ and three counts of unlawful use of personal identification information (§ 530.5, subd. (a)). In connection with the conspiracy count, Kashani admitted 16 overt acts and an allegation that the value of the property he took exceeded \$200,000 (§ 12022.6, subd.

¹ Statutory references are to the Penal Code unless otherwise specified.

(a)(2)).² Under the plea bargain, the prosecution agreed to dismiss 15 other theft-related counts with a *Harvey*³ waiver, and Kashani stipulated to a four-year prison sentence. The plea bargain called for Kashani to sign a stipulation that he would vacate a default judgment he had obtained in federal court against the victims named in the conspiracy count as well as in two of the counts of using personal identification information. Additionally, the plea bargain called for Kashani to sign a stipulation releasing his property interest in items seized pursuant to search warrants except for family/personal items. The plea agreement also provided that Kashani would receive a concurrent stipulated 16-month sentence in another case and the punishment for the taking enhancement would be stricken.

The trial court sentenced Kashani in accordance with the terms of the plea bargain. At a subsequent hearing, the court awarded \$9,817.07 in restitution to Technology Galaxy; \$79,426.13 in restitution to American Express; \$137,953.92 in restitution to Bank of America; \$4,790.98 in restitution to First National Bank of Omaha; and \$163,270 in restitution to First Franklin Financial. The parties stipulated to the amount of restitution awarded to Technology Galaxy, American Express, Bank of America and First National Bank of Omaha.

Kashani obtained a certificate of probable cause. (§ 1237.5.)

² Kashani admitted the allegation as a lesser-included taking allegation of \$3,200,000 (§ 12022.6, subd. (a)(4)), which was pled in the fourth amended complaint.

³ See *People v. Harvey* (1979) 25 Cal.3d 754.

FACTS

In this identity theft case, Kashani and two others conspired over a two-year period to use personal identifying information of Donald and Bonnie Chaffee of Fairview, Pennsylvania, among others, to obtain commercial loans and corporate credit cards for a defunct company. One of Kashani's coconspirators is the stepson of Donald Chaffee. Kashani used the credit cards to obtain more than \$300,000 worth of items. Kashani also was involved in the purchase of four San Diego County residential properties in which Donald Chaffee's personal information was used. The total amount financed for the four properties was \$2,983,000.

Kashani also used the name Clark Foster to apply for loans and credit cards for Habley Medical Technology (Habley), which went out of business in 1997 or 1998. Foster was a former employee of Habley. Foster did not give anyone permission to use his name and did not apply for loans or credit cards for Habley.

On April 1, 2009, Kashani filed an action in the United States District Court for the Southern District of California against Donald and Bonnie Chaffee, among others, and obtained a default judgment.⁴ (*Kashani v. Adams* (Feb. 1, 2010, No. 08cv0268) [nonpub. opn.].) The federal court entered a default judgment against Donald Chaffee in the amount of \$273,023.04 and against Bonnie Chaffee in the amount of \$239,171.49.

⁴ On our own motion, we augment the record on appeal to include a copy of the order entering judgment and the order granting the motion for default judgment, which were filed in superior court. (Cal. Rules of Court, rule 8.155(a)(1)(A).)

DISCUSSION

Appointed appellate counsel has filed a brief setting forth evidence in the superior court. Counsel presents no argument for reversal, but asks that this court review the record for error as mandated by *People v. Wende* (1979) 25 Cal.3d 436. Pursuant to *Anders v. California* (1967) 386 U.S. 738, counsel refers to as possible, but not arguable, issues: (1) whether Kashani knowingly and voluntarily entered into the plea agreement and understood all of its terms and conditions; and (2) whether Kashani's sentence and the court's other orders, including the restitution order, were consistent with the plea agreement.

We granted Kashani permission to file a brief on his own behalf. He has responded.

Kashani contends: (1) the plea bargain improperly required him to give up his default judgment against the Chaffees; (2) the taking allegation under section 12022.6 should be stricken; (3) his restitution should have been capped at \$200,000; (4) he should not have to pay restitution related to real estate transactions; and (5) it was improper to require him to forfeit his personal property that was unrelated to any criminal activity.

Kashani's contention regarding the provision that required him to vacate the default judgment is without merit. A plea bargain is an agreement negotiated by the prosecution and the defendant and approved by the court. (*People v. Orin* (1975) 13 Cal.3d 937, 942.) Courts frequently analogize a plea bargain to an enforceable contract, with defendant pleading guilty in exchange for assurances regarding the length of the sentence. (See, e.g., *People v. Knox* (2004) 123 Cal.App.4th 1453, 1458.) Generally,

plea agreements are enforceable under contract principles. (*People v. Renfro* (2004) 125 Cal.App.4th 223, 230.) These principles include the tenet that the prosecution and the defendant—like the parties to a private contract—are bound by the terms of the plea bargain. (*People v. Daugherty* (1981) 123 Cal.App.3d 314, 321 ["both the prosecutor and the defendant are entitled to the benefit of the bargain they have struck"].)

Here, the record shows the provision was clearly set forth in the plea bargain. (See *People v. West* (1970) 3 Cal.3d 595, 610.) The record also shows that at the change of plea hearing, Kashani stated he understood that the plea bargain included a provision that he "will sign a [stipulation] seeking reversal of the federal judgment" This was followed by Kashani stating he entered the plea freely and voluntarily. The record contains nothing to suggest that Kashani was forced or coerced into agreeing to the provision.

Kashani contends the taking allegation/enhancement under section 12022.6 should be stricken because it was improperly pled under subdivision (a)(4) of the statute, which applies to losses in excess of \$3,200,000. Kashani claims that because the court ordered restitution significantly less than that amount in restitution, there was no basis for the allegation. As we understand this claim, Kashani is arguing a failure of proof, but he ignores the fact that he admitted an allegation of section 12022.6, subdivision (a)(2), which applies to losses in excess of \$200,000, as a lesser included allegation of the pleaded allegation. (See fn. 2, *ante*.) Hence, there was no failure of proof for the section 12022.6, subdivision (a)(2) allegation; the court ordered restitution in excess of \$200,000. Kashani also complains the allegation was improperly pled because it was attached to all

counts of the fourth amended complaint. The case upon which Kashani relies, *People v. Bowman* (1989) 210 Cal.App.3d 443, predated amendments to section 12022.6, which authorized aggregation of the losses in multiple counts to determine whether the various thresholds for the enhancement were applicable. (See *People v. Green* (2011) 197 Cal.App.4th 1485, 1492-1493.) The amendments were in response to *Bowman*. (*Green*, at pp. 1492-1493.)

In any event, Kashani freely and voluntarily admitted the aggregate losses suffered by victims of his crimes exceeded \$200,000 within the meaning of section 12022.6, subdivision (a)(2). This was in accordance with the plea agreement, which also called for the enhancement under section 12022.6, subdivision (a)(2) to be stricken. The court did not impose the enhancement.

For his next contention—the claim that his restitution should have been capped at \$200,000—Kashani relies on his admission to the allegation under section 12022.6, subdivision (a)(2). Kashani argues because the threshold for application of this sentencing enhancement is \$200,000, he should not be required to pay restitution in excess of that amount. He is mistaken. The plea agreement did not limit the amount of permissible victim restitution to be ordered. Moreover, Kashani's plea agreement included a *Harvey* waiver, which allowed the court to order payment of restitution on dismissed counts, and was sufficient to apprise Kashani that any restitution order entered could include such amounts. (*People v. Campbell* (1994) 21 Cal.App.4th 825, 830; see also § 1202.4, subd. (f).)

Kashani claims he should not be required to pay restitution stemming from real estate transactions because he was not charged with any counts nor admitted conspiracy acts that related to real estate fraud. Kashani is mistaken. Kashani admitted overt act 14, which alleged that he purchased real property in the name of Donald Chaffee by falsifying loan documents. Additionally, Kashani was charged in counts 24 and 28 with making false financial statements (§ 532, subd. (a)(1)) in connection with fraudulent real estate transactions. Because those counts were among the ones that were dismissed with a *Harvey* waiver under the plea agreement, the court was authorized to consider them in awarding restitution.

Kashani also challenges the \$163,270 restitution award to First Franklin Financial because he says under civil antideficiency statutes (Code Civ. Proc., §§ 580b, 580c & 580d) and the one-action rule (*Id.*, at § 726, subd. (a)), the lender is not entitled to restitution.⁵ However, Kashani has not provided any authority that the antideficiency statutes are applicable to restitution in a criminal proceeding.

Kashani claims he was required to forfeit personal property that was unrelated to any criminal conduct. However, the record shows that the parties stipulated to the disposition of 196 items seized by police pursuant to three search warrants; the stipulation provided numerous items were to be released to Kashani. The stipulation did not state that Kashani was preserving his right to challenge it on appeal. Without such a

⁵ According to the probation report, First Franklin Financial financed the purchase of residential property in the name of Donald Chaffee.

preservation provision, Kashani is estopped from challenging the stipulation on appeal.
(See *In re Griffin* (1967) 67 Cal.2d 343, 347-348.)

A review of the record pursuant to *People v. Wende, supra*, 25 Cal.3d 436 and *Anders v. California, supra*, 386 U.S. 738 has disclosed no reasonably arguable appellate issues. Competent counsel has represented Kashani on this appeal.

DISPOSITION

The judgment is affirmed.

HUFFMAN, Acting P. J.

WE CONCUR:

NARES, J.

HALLER, J.